U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 17 2004

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an individual. It seeks to employ the beneficiary permanently in the United States as a live-in companion/housekeeper. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that the position meets the requirements of a skilled worker.

On appeal, the petitioner submits a statement.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The petitioner initially filed the petition under skilled worker. As stated above, this position requires two years of training or experience. The Form ETA-750, Application for Alien Employment Certification, filed on May 21, 1992, gives the experience requirements as being ninety days.

On April 17, 2003, the director denied the petition noting that the qualifications for the position of companion/housekeeper are grade school and high school education and ninety days of experience in the job offered, not the two years required for a skilled worker.

On appeal, the petitioner states, through counsel:

Although I received a Request For Evidence requesting proof that the Alien met the educational training experience as requested on ETA 750 requesting financial ability of the employer to pay the wage I have [at] no time received a Request For Evidence, as required by the Code of Federal Regulations to correct and supply proof that the job required 2 years experience. The I-140 contained a typographic error in that it requested approval as a skilled worker rather than as "any other worker." We hereby request that this appeal be treated in the alternative as a motion to reconsider and we respectfully request that we be allowed to amend Form I-140 and check "other worker." On previous occasions when typographic errors occur the INS would call for clarification and confirmation to correct such information.

Eligibility in this matter hinges on whether the petitioner has established that the position meets the education and experience requirements as stated in the Form ETA 750 as of the petition's priority date, which is the

date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. 8 C.F.R. § 204.5(d). The petition's priority date in this instance is May 21, 1992.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition cannot be approved at a later date after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner proposes to amend the Immigrant Petition for Alien Worker (I-140) for the lesser classification after the director has entered his decision. No law or regulation requires the director to consider lesser classifications if the petition does not meet the requirements under the one requested. The AAO cannot conclude that the director committed reversible error by adjudicating the petitioner under the classification that the petitioner requested. No provision permits the petitioner to amend the petition on appeal in order to establish eligibility under a lesser classification.

Though the circumstances differ in various authorities, the pertinent reasoning is persuasive. The petitioner must establish that the position offered to the beneficiary merited the stated classification. *See Matter of Michelin Tire Corp*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec.169, 176 (Assoc. Comm. 1988).

As the petitioner has not established that the position requires at least two years of training or experience, the position does not meet the requirements of a skilled worker and the beneficiary cannot be found qualified for classification as a skilled worker.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.